

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 4177

MICHELLE GRAU
9268 Regents Road B
La Jolla, CA 92037

Intern Pharmacist Registration No.
INT 27112

Respondent.

DECISION AND ORDER

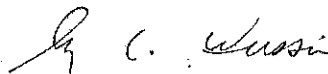
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 26, 2012.

It is so ORDERED on October 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
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8 *Attorneys for Complainant*

9
10 **BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

13 **MICHELLE F. GRAU**
14 **9268 Regents Road B**
La Jolla, CA 92037

15 **Intern Pharmacist Registration No. INT**
16 **27112**

17 **Respondent.**

Case No. 4177

OAH No. 2012020011

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
20 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
21 submitted to the Board for approval and adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Kamala
25 D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney
26 General.

27 2. On or about October 19, 2010, the Board of Pharmacy issued Intern Pharmacist
28 Registration No. INT 27112 to Michelle F. Grau (Respondent). The Intern Pharmacist

1 Registration was in full force and effect at all times relevant to the charges brought in First
2 Amended Accusation No. 4177 and will expire on October 31, 2015, unless renewed.

3 JURISDICTION

4 3. First Amended Accusation No. 4177 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The First
6 Amended Accusation and all other statutorily required documents were properly served on
7 Respondent on August 28, 2012. Respondent timely filed her Notice of Defense contesting the
8 Accusation that was served on her on November 30, 2011. A copy of First Amended Accusation
9 No. 4177 is attached as Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 4. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in First Amended Accusation No. 4177. Respondent also has carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of
14 License and Order.

15 5. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 7. Respondent admits the truth of each and every charge and allegation in First
26 Amended Accusation No. 4177, agrees that cause exists for discipline and hereby surrenders her
27 Intern Pharmacist Registration No. INT 27112 for the Board's formal acceptance.
28

8. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Intern Pharmacist Registration without further process.

CONTINGENCY

9. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

10. The parties understand and agree that email and facsimile copies of this Stipulated Surrender of License and Order, including email and facsimile signatures thereto, shall have the same force and effect as the originals.

11. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Intern Pharmacist Registration No. INT 27112, issued to Respondent Michelle F. Grau, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Intern Pharmacist Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against

1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent's license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as an intern pharmacist in California as
4 of the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
6 issued, her wall certificate on or before the effective date of the Decision and Order.

7 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
8 California, the Board shall treat it as a new application for licensure. Respondent must comply
9 with all the laws, regulations and procedures for licensure in effect at the time the application or
10 petition is filed, and all of the charges and allegations contained in First Amended Accusation No.
11 4177 shall be deemed to be true, correct and admitted by Respondent when the Board determines
12 whether to grant or deny the application or petition.

13 5. Respondent shall pay the agency its costs of investigation and enforcement in the
14 amount of \$8,285.00 prior to issuance of a new or reinstated license.

15 6. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in First Amended Accusation, No. 4177
18 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
19 of Issues or any other proceeding seeking to deny or restrict licensure.

20 7. Respondent shall not reapply for licensure with the Board until three (3) years from
21 the effective date of the Board's Decision and Order in this matter has passed.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Order. I understand the
3 stipulation and the effect it will have on my Intern Pharmacist Registration. I enter into this
4 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
5 be bound by the Decision and Order of the Board of Pharmacy.

6
7 DATED: 9/19/12

Michelle F. Grau

MICHELLE F. GRAU

Respondent

8
9 ENDORSEMENT

10 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
11 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

12 Dated: 9/19/12

Respectfully submitted,

KAMALA D. HARRIS

Attorney General of California

LINDA K. SCHNEIDER

Supervising Deputy Attorney General

Adrian R. Contreras

ADRIAN R. CONTRERAS

Deputy Attorney General

Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 4177

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8 *Attorneys for Complainant*

9 **BEFORE THE**
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11 **DEPARTMENT OF CONSUMER AFFAIRS**
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14 **9268 Regents Road B**
La Jolla, CA 92037

OAH No. 2012020011

15 **Intern Pharmacist Registration No. INT**
16 **27112**

FIRST AMENDED
ACCUSATION

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about October 19, 2010, the Board of Pharmacy issued Intern Pharmacist
24 Registration No. INT 27112 to Michelle F. Grau (Respondent). The license was in full force and
25 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
26 unless renewed.

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1 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
2 conviction following a plea of nolo contendere. An action that a board is permitted to take
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section
6 1203.4 of the Penal Code.

7 “(d) The Legislature hereby finds and declares that the application of this section has been
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
9 554, and that the holding in that case has placed a significant number of statutes and regulations
10 in question, resulting in potential harm to the consumers of California from licensees who have
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the
13 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
14 to, but rather are declaratory of, existing law.”

15 8. Section 493 of the Code states:

16 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
17 the department pursuant to law to deny an application for a license or to suspend or revoke a
18 license or otherwise take disciplinary action against a person who holds a license, upon the
19 ground that the applicant or the licensee has been convicted of a crime substantially related to the
20 qualifications, functions, and duties of the licensee in question, the record of conviction of the
21 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
22 and the board may inquire into the circumstances surrounding the commission of the crime in
23 order to fix the degree of discipline or to determine if the conviction is substantially related to the
24 qualifications, functions, and duties of the licensee in question.

25 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
26 ‘registration.’”

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1 9. Section 4022 of the Code states:

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

4 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
5 prescription," "Rx only," or words of similar import.

6 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
7 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
8 in with the designation of the practitioner licensed to use or order use of the device.

9 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
10 prescription or furnished pursuant to Section 4006."

11 10. Section 4060 of the Code states:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
25 devices."

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1 11. Section 4301 of the Code states:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 "...

6 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
7 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
8 whether the act is a felony or misdemeanor or not."

9 "...

10 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
11 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
12 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
13 to the extent that the use impairs the ability of the person to conduct with safety to the public the
14 practice authorized by the license.

15 "...

16 "(j) The violation of any of the statutes of this state, or any other state, or of the United
17 States regulating controlled substances and dangerous drugs.

18 "..."

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.”

8 “. . .”

9 REGULATORY PROVISIONS

10 12. California Code of Regulations, title 16, section 1760, states:

11 “In reaching a decision on a disciplinary action under the Administrative Procedure Act
12 (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines
13 entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.

14 “Deviation from these guidelines and orders, including the standard terms of probation, is
15 appropriate where the board, in its sole discretion, determines that the facts of the particular case
16 warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary
17 problems.”

18 13. California Code of Regulations, title 16, section 1769, states:

19 “. . .

20 “(b) When considering the suspension or revocation of a facility or a personal license on the
21 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating
22 the rehabilitation of such person and his present eligibility for a license will consider the
23 following criteria:

24 “(1) Nature and severity of the act(s) or offense(s).

25 “(2) Total criminal record.

26 “(3) The time that has elapsed since commission of the act(s) or offense(s).

27 “(4) Whether the licensee has complied with all terms of parole, probation, restitution or
28 any other sanctions lawfully imposed against the licensee.

1 “(5) Evidence, if any, of rehabilitation submitted by the licensee.”

2 14. California Code of Regulations, title 16, section 1770, states:

3 “For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare.”

9 **DRUGS**

10 15. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety
11 Code section 11055, subdivision (d)(1) and is a dangerous drug pursuant to Code section 4022.

12 16. Methamphetamine is a Schedule II controlled substance pursuant to Health and
13 Safety Code section 11055, subdivision (d)(2) and is a dangerous drug pursuant to Code section
14 4022.

15 17. Hydrocodone, when mixed with acetaminophen, is marketed under the trade name
16 Vicodin and Norco. Hydrocodone is a Schedule II controlled substance pursuant to Health and
17 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code
18 section 4022.

19 18. Morphine is a Schedule II controlled substance pursuant to Health and Safety Code
20 section 11055, subdivision (b)(1)(L) and is a dangerous drug pursuant to Code section 4022.

21 **COSTS**

22 19. Section 125.3 of the Code states, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct-Use of a Controlled Substance to an Extent or in a
Manner Dangerous or Injurious to Oneself or to Others)**

20. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) in that she used the controlled substances or dangerous drugs amphetamine, methamphetamine, hydrocodone, and morphine in a manner dangerous or injurious to herself or to others. The circumstances are as follows:

21. On or about October 28, 2010, at approximately 8:02 p.m., officers with the San Diego Police Department were dispatched when a caller stated that a female driver was slumped over inside an SUV. Officers arrived at the scene and saw Respondent sitting in the driver's seat, slumped and behind the wheel. The first officer knocked on the passenger side window and driver's side window in an attempt to wake her. The keys were in the accessories position of the ignition and the lights on the dash were lit. Respondent finally woke up after five minutes.

22. Respondent was confused and in a state of panic. She immediately began crying and hyperventilating. Although Respondent said she was scared and initially did not want to open the door, eventually she opened the door for the officers. The first officer saw Respondent's movements while she was in the driver's seat and her "lethargic" responses indicated to him that she was under the influence of a controlled substance. He helped Respondent out of the SUV and assisted her to sit on the curb. He spoke to Respondent and saw further signs of her being under the influence of a controlled substance: her pupils were constricted, or "pinpoint," with little to no reaction to light; her speech was slurred; and her hand-eye coordination was "very delayed."

23. Meanwhile, a second officer went to retrieve Respondent's identification from the SUV after she consented and, in doing so, he saw an uncapped syringe in the center console. He saw an open purse in the front seat that had two small tin foiled pipes inside with the interior portion of the pipes burnt. He opened the passenger door and found Respondent's purse. Inside the purse, he found a capped syringe with a brown liquid inside, an empty capped syringe, and a small clear plastic Ziploc baggie containing five white pills, later determined to be Vicodin.

1 24. Respondent allowed the officers to search the SUV. The second officer found a glass
2 pipe in a handbag on the rear passenger seat. This pipe had a bulbous end with what looked like a
3 residue inside of it.

4 25. The first officer saw Respondent had fresh track marks on her left arm near the crook
5 of her elbow. Later, Respondent's blood tested positive for amphetamine, methamphetamine,
6 hydrocodone, and morphine.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Violation of Laws Regulating Controlled Substances and**
9 **Dangerous Drugs)**

10 26. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j)
11 in that Respondent used amphetamine, methamphetamine, hydrocodone, and morphine;
12 possessed a hypodermic needle or syringe; and possessed narcotic paraphernalia in violation of
13 Code section 4060. The circumstances are described in paragraphs 20-25, above, and are hereby
14 incorporated as if fully set forth herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(December 7, 2011, Criminal Conviction for Petty Theft on September 8, 2011)**

17 27. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
18 (l) of the Code in that she was convicted of a crime substantially related to the qualifications,
19 functions, and duties of a licensee. The circumstances are as follows:

20 28. On or about December 7, 2011, in a criminal proceeding entitled *People v. Michelle*
21 *F. Grau*, in San Diego County Superior Court, case number C314506, Respondent was convicted
22 on her plea of guilty of violating Penal Code sections 484/488, petty theft, a misdemeanor. As a
23 result of a plea agreement, one count of violating Penal Code section 459, burglary, a
24 misdemeanor, was dismissed.

25 29. The facts that led to the conviction are that on or about September 8, 2011,
26 Respondent entered a Kohl's store with an empty purse. She selected merchandise from several
27 sections of the store and went into a fitting room. Inside of this fitting room, Respondent hid the
28 merchandise in her empty purse. Respondent subsequently left the store without making any

1 attempt to pay for this merchandise. A store security guard then stopped her outside of the store.
2 The value of the merchandise was estimated at over \$500. Respondent later admitted that she had
3 no money and that she was in pharmacy school.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

6 30. Respondent is subject to disciplinary action under Code sections 4301, subdivision (f)
7 in that Respondent committed petty theft, an act of moral turpitude or dishonesty. The
8 circumstances are described in paragraphs 27-29, above, and are hereby incorporated as if fully
9 set forth herein.

10 **PRAYER**

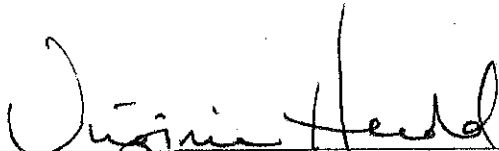
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Pharmacy issue a decision:

13 1. Revoking or suspending Intern Pharmacist Registration No. INT 27112, issued to
14 Michelle F. Grau;

15 2. Ordering Michelle F. Grau to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3; and

18 3. Taking such other and further action as deemed necessary and proper.
19

20
21 DATED: 8/27/12



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

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